

Register of Foreign Ownership of Water Entitlements

REGULATION IMPACT STATEMENT

NOVEMBER 2016

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Table of Contents

Background	1
1. The problem	4
2. Case for government action / Objective of reform	7
3. Policy options	8
Option 1: No change	8
Option 2: Register of foreign ownership of water entitlements.....	8
4. Cost benefit analysis of each option / Impact analysis.....	10
Option 1: No change	10
Option 2: Register of foreign ownership of water entitlements.....	10
Option 2a: National register from state and territory based registers.....	13
Option 2b: Stand-alone Commonwealth administered register.....	14
Option 2c: Expanded Agricultural Land Register	15
5. Consultation plan.....	17
6. Option selection / Conclusion.....	19
7. Implementation and evaluation	20

Background

The Government welcomes foreign investment because it plays an important and beneficial role in the Australian economy. It has helped build Australia's economy and will continue to enhance the wellbeing of Australians by supporting economic growth and prosperity.

Foreign investment provides additional capital for economic growth, creates employment opportunities, improves consumer choice and promotes healthy competition, while increasing Australia's competitiveness in global markets. The Financial System Inquiry found that 'ongoing access to foreign funding has enabled Australia to sustain higher growth than it otherwise could'.

Foreign investment can also help deliver improved competitiveness and productivity by introducing new technology; providing much needed infrastructure; allowing access to global supply chains and markets; and enhancing Australia's skills base. Without the injection of additional capital, technology and skills that foreign investment provides, production, employment and income would all be lower.

Notwithstanding the benefits of foreign investment to the community, there is a need to ensure foreign investment is consistent with Australia's interests and the community retains confidence in the benefits of foreign investment.

The Government reviews foreign investment proposals against the national interest on a case-by-case basis. This flexible approach maximises investment flows, while protecting Australia's interests and providing assurance to the community.

The foreign investment review framework is set by the legislative framework and supported by Australia's Foreign Investment Policy (the Policy) and Guidance Notes on the specific application of the law.

The Foreign Investment Review Board (FIRB), a non-statutory advisory body, is responsible for examining proposals and advising on their national interest implications. The Treasurer retains responsibility for making decisions.

The Treasurer has the power to block foreign investment proposals or apply conditions to the way proposals are implemented to ensure they are not contrary to the national interest.

The national interest, and what would be contrary to it, is not defined in the *Foreign Acquisitions and Takeovers Act 1975* (FATA). Instead, the FATA confers upon the Treasurer the power to decide in each case whether a particular investment would be contrary to the national interest.

The Policy outlines the Government's approach to administering the foreign investment framework, including national interest considerations. The Government typically considers the following factors when assessing foreign investment proposals against the national interest: national security, competition, other Australian Government policies (including tax), impact on the economy and the community and character of the investor.

In addition to these factors, when examining foreign investment proposals in the agricultural sector, the Government typically considers the effect of the proposal on: the quality and availability of Australia's agricultural resources (including water), land access and use, agricultural production and productivity, Australia's capacity to remain a reliable supplier of agricultural production, both to the Australian community and our trading partners, biodiversity, and employment and prosperity in Australia's local and regional communities.

The legislative framework includes the FATA and the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* and their associated regulations. The legislation defines the term 'foreign person'.

The FATA defines a foreign person as:

- an individual that is not ordinarily resident in Australia; or
- a foreign government or foreign government investor; or
- a corporation, trustee of a trust or general partner of a limited partnership where an individual not ordinarily resident in Australia, foreign corporation or foreign government holds a substantial interest of at least 20 per cent; or
- a corporation, trustee of a trust or general partner of a limited partnership in which two or more foreign persons hold an aggregate substantial interest of at least 40 per cent.

The Government introduced the *Register of Foreign Ownership of Agricultural Land Act 2015* (Agricultural Land Register Act) to increase transparency of foreign investment in agricultural land. The Agricultural Land Register was established on 1 July 2015 and is administered by the Australian Taxation Office (ATO).

The first Report on the Register of Foreign Ownership of Agricultural Land (Report) was released on 7 September 2016. The Report has been generally well received, although in the lead up to the release and shortly after, some commentators in the media were calling for greater detail on individual investors.

Radio host Alan Jones is quoted as saying:

"The register doesn't even begin to deliver what was promised and what was promised was we would be able to identify who owns what – it only provides an overview and a data trend about overall levels of foreign ownership."¹

It was never the intention that information included in the Report could be used to identify individual investors. The legislation underpinning the Report prevents the release of information that could be used to identify an individual.

1 Sydney Morning Herald, 'Foreign ownership register a 'whitewashed travesty': Alan Jones puts Scott Morrison on notice.' 7 September 2016.

The Report found that foreign investors hold 13.6 per cent of Australian agricultural land, mostly via leases.² The United Kingdom is the biggest investor by land size holding more than 50 per cent of all foreign owned agricultural land. It is followed by the United States of America which holds just under 15 per cent.

While there is increasing interest from Chinese investors in Australia's agricultural land, only three per cent of foreign land holdings are held by Chinese investors. This represents less than one-half of one per cent of all Australian agricultural land. The Report has enabled for the first time, the Government and community to have a comprehensive picture of foreign investment in Australia's agricultural land.

Transparency around the levels of foreign investment is an important element to providing the community with confidence in Australia's foreign investment screening regime. Community confidence in foreign investment is a key factor to ensuring Australia remains an attractive destination for investment.

The Government committed to introducing a Water Register during the passage of legislation which established the Agricultural Land Register. This legislation provides that the Agricultural Land Register will lapse if legislation giving effect to a water register has not passed Parliament by 1 December 2016.

Foreign investment in water entitlements is not directly screened under Australia's foreign investment framework, but may be part of screening other types of investments such as land acquisitions (where water is attached to land) or as assets of an Australian business. Foreign investment in water entitlements is not captured in the Agricultural Land Register.

A Regulation Impact Statement (RIS) was not prepared ahead of the Government making the decision to introduce a Water Register. As the Government had committed to a Water Register, consultation undertaken in February 2016 occurred on the implementation approach. Options were included in a publically released consultation paper in an attempt to identify an approach with the lowest regulatory cost.

Following consultation, an interim RIS was prepared as part of the 2016-17 Budget when the Government decided the approach it would take to implement the Water Register. This RIS has been prepared following consultation on the exposure draft Bill and ahead of its introduction into Parliament.

² The **Agricultural Land Register Report** can be found on the Foreign Investment Review Board website.

1. The problem

The problem is a lack of transparency about foreign ownership of water entitlements. While foreign investment makes an important contribution in supporting economic growth, jobs and prosperity and can assist in expanding Australia's production capacity, there is community concern about the level of foreign ownership of water entitlements including concerns that foreign investment in water entitlements is impacting water prices.³

The Wall Street Journal has highlighted that some farmers and irrigators in Australia are concerned that speculation in water entitlements by foreign investors is increasing water prices making it difficult for them to irrigate crops. These concerns are likely to be exacerbated by broader concerns about global food and water security which may lead to greater interest by foreign investors in Australia's water assets.⁴

These concerns have been growing in recent years and will likely continue to grow, partly due to greater trading of water entitlements since 2004⁵ due to 'unbundling' (separation of water entitlements from land)⁶, and the potential increase in the volume of water held by foreign investors.⁷

Without reliable information on the extent of foreign ownership of water entitlements, it is difficult to address or allay these concerns.

There is limited evidence to support claims that foreign investment in water entitlements is having a detrimental impact on water prices. It is more likely that factors affecting water prices are: the amount of water available due to climatic conditions (such as drought or rainfall levels), water demand due to crop types or the time of year, the amount of water acquired by governments for environmental purposes and other regulatory factors.⁸ The community appears to be more concerned about foreign ownership of water during times of drought or where prices are higher, than when prices are low.⁹

3 Community concerns have been expressed through correspondence to Members of Parliament and Senators.

4 Wall Street Journal, '*Australia to Register Its Concern About Foreigners Buying Its Water*', March 18 2016.

5 National Water Commission, Factsheet, Water trading in Australia, February 2010.

http://archive.nwc.gov.au/__data/assets/pdf_file/0004/7843/Factsheet_Water_trading_in_Aus_FINAL_v2.pdf.

6 The National Water Initiative, agreed between Australian federal, state and territory governments in 2004 provides for the 'unbundling' of water from land. Unbundling has been progressing but is not complete across Australia.

7 The Australian Bureau of Statistics Agricultural Land and Water Ownership Survey found that as at 30 June 2013 14 per cent of total water entitlements (by volume) were held by foreign investors. This is an increase of 55 per cent (by volume) on the 2010 level of foreign ownership.

8 Aither, '*Supply-side drivers of water allocation prices in the southern Murray-Darling Basin*' 2016; Aither '*Trends and drivers of irrigation*' 2016; National Water Commission, '*Australian water markets report 2012-13*', 2016, Canberra.

9 The State of Victoria Department of Environment, Land, Water and Planning, Trends in Northern Victorian Water Trade 2001-2015, 24 February 2016. This report notes that concerns about water speculators peak during times of low rainfall resulting in short supply and strong demand of water.

Nonetheless, it is important that the community has confidence in Australia's foreign investment screening framework and that foreign investment is in Australia's national interest. However, without transparency on the levels of foreign ownership of water entitlements the Government is limited in its ability to address community concerns and for there to be an informed public debate on the issue. There is a risk that, if not addressed, this lack of transparency will continue to undermine community confidence in the benefits of foreign investment more broadly.

Australia needs to continue to attract high levels of foreign investment. The Financial System Inquiry found that 'Australia is, and is likely to continue to be, a substantial net importer of capital'. It also found that Australia has 'significant endowments of natural resources that cannot be fully utilised without foreign investment'.

Further, according to an ANZ report, approximately \$1 trillion of investment in Australian agriculture is needed by 2050 to meet rising global demand, and to capitalise on Australia's well-recognised strengths as a producer and exporter of high quality food and agricultural products.¹⁰

While there are various data sources covering different aspects of water entitlements, data on the level of foreign ownership of water entitlements is limited. Water is not only used in the agricultural sector but is a key input in other sectors including the mining, manufacturing, electricity and waste services sectors. The various data sources and registers generally do not identify foreign ownership of water entitlements, or if they do, the scope of the data is limited to a particular sector.

The only data source on foreign investment in water resources is the Australian Bureau of Statistics (ABS) Agricultural Land and Water Ownership Survey (ALWOS). The survey found that as at 30 June 2013 14 per cent of total water entitlements (by volume) were held by foreign investors. This is an increase of 55 per cent (by volume) on the 2010 level of foreign ownership.

While the survey provides some insights into the level of foreign ownership of water entitlements, the picture is incomplete as it only captures foreign interests in water entitlements for agricultural purposes. Other industry sectors such as mining, manufacturing and energy sectors where it is likely foreign investors hold water entitlements are excluded. In addition, as the information is collected through a voluntary survey its comprehensiveness and reliability cannot be confirmed.

The states and territories, in their capacity as water resource managers, maintain a number of publically accessible registers for water entitlements, water trade and water use. This information is also compiled into annual reports which generally include the number and volume of water entitlements issued each year and statistics on entitlement and allocation trade.

The Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), compiles annual water markets reports using information collected by the states and territories as well as information provided to the Bureau of Meteorology (BOM) and by the larger Irrigation Infrastructure Operators (IIOs).¹¹

10 Port Jackson Partners, *'Greener pastures: The global soft commodity opportunity for Australia and New Zealand'*, 2012, report to ANZ, Sydney.

11 Any person or entity who owns or operates water service infrastructure for the purpose of delivering water to another person for the primary purpose of being used for irrigation.

There are also national water reporting arrangements by the BOM (National Water Account), the ABS (Water Account, Australia) and the Australian Competition and Consumer Commission (Water Monitoring Report). All of these annual reporting arrangements summarise water entitlement information at aggregate levels. However, none of these collect data on foreign ownership.

Some irrigators within the area of operation of IIOs hold rights against the IIO to have water delivered through the IIO's infrastructure network. In these instances water entitlements are held by the IIO on behalf of the irrigators. The information collected by various government agencies does not include information about irrigation rights and temporary or permanent trade of irrigation rights within IIO networks.

This is potentially a large gap in information as irrigation operators, and therefore their customers, hold relatively large volumes of water¹² and yet information on the amounts held by their customers, and whether their customers are foreign persons is not collected.

¹² For example, the Australian Competition and Consumer Commission, ACCC Water Monitoring Report 2014-15, Canberra, 2016, reports that private IIOs in the Murray Darling Basin hold 18 per cent, by volume, of the water entitlements issued in that system.

2. Case for government action / Objective of reform

Lack of transparency about the level of foreign ownership of Australia's water entitlements is making it difficult for the Government to address community concerns regarding the issue and for there to be informed public debate. There is a risk that, if not addressed, these concerns will continue to undermine community confidence in the benefits of foreign investment.

Increasing transparency about the level of foreign ownership of water entitlements will assist in informing the Government and the community about emerging investment trends and enhance the information available to the Government for future policy development.

Capturing data around these issues is within government control and has been successfully demonstrated through the Agricultural Land Register. The release of the first Agricultural Land Register Report showed that it could contribute effectively to the public debate about levels of foreign investment and can provide an evidence base for Government policy in the future.

The National Farmers Federation (NFF) welcomed the release of the Agricultural Land Register Report and indicated that:

"...transparency was key to addressing community concerns around foreign investment in agriculture so as to fill the severe capital shortfall faced by the sector. The NFF has long called for a register of this nature to provide firm data around the foreign ownership debate and we most certainly welcome the release of this report."¹³

Increasing transparency about the levels of foreign ownership of water entitlements will complement the Agricultural Land Register to create a more comprehensive picture about the participation of foreign investors in Australia's natural resources.

¹³ National Farmers Federation, **NFF welcomes foreign land register but calls for more detail**, media release, Canberra 7 September 2016.

3. Policy options

In this case, the Government already committed itself to one policy approach in a public and accountable way. There are two options considered by Government to increase the transparency of foreign ownership of water entitlements and establish a register. However, within the second option, there are potentially three approaches to implement a register.

A third option was not considered feasible given that the Australian Parliament made the decision that greater transparency about foreign ownership of water entitlements should be delivered via a register when it considered the Agricultural Land Register Act. Therefore, the RIS focuses on the alternative implementation options that are consistent with this policy approach.

Option 1: No change

This option would see no change in the available data on foreign ownership of water entitlements. This approach would not meet the policy objectives of increasing transparency of foreign ownership of water entitlements. Information gaps would continue as the ALWOS survey only represents foreign ownership within the agriculture sector, and is only conducted every three years.

Under this approach, the legislation underpinning the Agricultural Land Register would sunset. This would result in reduced transparency about foreign ownership in the agricultural sector and would potentially result in negative views from the community about the ability of the Government to address information asymmetry and improve the public debate about the levels of foreign investment in the agriculture sector and water entitlements.

Option 2: Register of foreign ownership of water entitlements

Option two is to develop a register of foreign ownership of water entitlements. It would require foreign persons to register their interests in water entitlements through a new or existing information technology interface. The information would then be compiled into a publically available report on the levels of foreign ownership of water entitlements at a point in time, similar to the approach taken for the Agricultural Land Register.

This option would effectively meet the policy objective of increasing transparency of foreign ownership of water entitlements. The register would be more comprehensive than currently available information as all industry sectors would be covered, all foreign investors would be required to register (rather than through a survey approach), and the statistics gained from the register could be released more frequently than the ABS survey data (which is released every three years).

This approach is also consistent with the Government's commitment to introduce legislation to establish a register of foreign ownership of water entitlements as part of the passage of the Agricultural Land Register Act.

There are a number of implementation options that were considered:

- **Option 2a** is a national register utilising information from state based registers. This option includes altering existing data collection systems in the states and territories to enable collection of additional information on foreign ownership status. A national register would be compiled from the state registers. This option would require some level of harmonisation among systems that are not currently compatible and expansion of systems to include foreign person information and irrigation rights which are not currently captured on state and territory registers.
- **Option 2b** is the establishment of a stand-alone Commonwealth administered register introduced by separate legislation. The registration form would be implemented through a new information technology build.
- **Option 2c** is expanding the existing Agricultural Land Register to include water entitlements. This approach would result in amendments to the legislative framework for the Agricultural Land Register to include water entitlements and the registration form would be implemented through an expanded Agricultural Land Register form.

4. Cost benefit analysis of each option / Impact analysis

Option 1: No change

Benefits

The benefit of this option is that there is no additional regulatory impact on foreign investors. The current arrangements for data collection about foreign ownership details would not change.

Costs

Leaving the current arrangements as they are for data on foreign ownership of water entitlements is unlikely to address community concerns about foreign investment in water entitlements, provide transparency to improve public debate or provide an evidence base for future Government action.

This option may result in costs to the community and economy especially where a lack of information undermines community confidence in foreign investment. It would also result in the sunset of the Agricultural Land Register which has been successful in informing the community debate.

Option 2: Register of foreign ownership of water entitlements

This option would introduce a register of foreign ownership of water entitlements. There are three implementation options under this approach:

- amend state and territory registers to include foreign ownership information,
- create a stand-alone Commonwealth administered register, or
- amend the existing Agricultural Land Register to include water entitlements.

Benefits

This option will ensure that a comprehensive picture of foreign investment in water entitlements is obtained. The community will benefit from receiving specific and comprehensive information about the level of foreign ownership of water entitlements through better quality public debate on the issue. Experience through the Agricultural Land Register has shown that when comprehensive and factual information on levels of foreign investment is available, misinformation about the level and source of foreign investment can be corrected.

Costs

Number of foreign persons

Regardless of the implementation option, the introduction of a register will impose a regulatory cost on entities or individuals who meet the definition of foreign person. It is estimated that 767 foreign persons will be affected by this option.¹⁴ This number is based on the following assumptions:

The number of foreign persons are based on the number of foreign persons who operate in agriculture, mining, IIOs, energy, and manufacturing. The ABS Water Account defines the sectors which consume water in Australia. When sectors without water entitlements are removed from the ABS Water Account (namely households and water supply utilities), the above are the key sectors remaining.

Agriculture

It is expected that there will be overlap between persons who have agricultural land holdings and water entitlements. An informed estimate by the Department of Agriculture and Water Resources (DAWR) on the proportion of agricultural land that is subject to irrigation is 75 per cent.

On the basis of the ALWOS, the number of agricultural businesses with some level of foreign ownership at 30 June 2013 was 806. It is estimated that 604 foreign persons who hold agricultural land would also need to register water entitlements.

Mining

Based on ABS data (catalogue 8167.0), 22.5 per cent of mining businesses had more than 10 per cent foreign ownership. Based on the National Water Commission publication, *Water issues in jurisdictional planning for mining: an overview of current practice*, the mining industry typically requires access to water to meet processing, dust suppression and potable water requirements.

According to the *Australian Atlas of Mineral Resources, Mines and Processing Centres* produced by Geoscience Australia there were 421 operating mines as at February 2015 and 235 processing plants as at February 2014.

On the basis that the owners of 22.5 per cent of these would meet the definition of foreign person (which is overestimating the number as the definition requires 20 per cent interest to be held by a foreign person), 148 foreign persons in the mining sector would need to register their water entitlement.

¹⁴ For the purposes of determining the regulatory costs for the Water Register, the number of affected foreign persons was assumed to be stable across the costing period. While the ABS ALWOS survey indicated an increase in the volume of water that was foreign owned between 2010 and 2013, across the same period the survey indicated a decrease in the number of agricultural businesses that were foreign owned. It would therefore seem reasonable to assume that the number of foreign persons affected by the Water Register was stable.

Irrigation Infrastructure Operators (IIOs)

During consultation, IIOs indicated that they would face a cost in determining whether or not they met the definition of foreign person. Unlike other entities, IIOs are less likely to have considered whether they meet the definition of foreign person unless they also owned land.

There will be a one-off cost for the IIO to determine that it is a foreign person. While it will need to consider whether it meets the definition on an ongoing basis, this can be built into its processes for managing new customers.

The most likely way that an IIO would seek to determine whether it met the definition of 'foreign person' would be to write out to its members asking them to self-identify as a foreign person. The IIO would then compile the responses to determine if the IIO met the definition of a foreign person. This one-off cost has been calculated at around \$35,500.

This is based on the 22 IIOs operating in Australia¹⁵, seeking the foreign person status of their customer base of 13,600¹⁶ (including both individuals and businesses) at a cost of \$1 per letter; three hours of administration costs estimated at \$196.35 per IIO ((Office of Best Practice Regulation (OBPR) standard cost of \$65.45 per hour)); and each IIO seeking two hours of legal advice at a cost of \$800 per IIO.

Manufacturing

Based on ABS data (catalogue 8167.0), 5.9 per cent of manufacturing businesses had more than 10 per cent foreign ownership. Given the small proportion of foreign ownership in this sector, and low probability that water is being sourced through a water entitlement, it is estimated that no foreign persons operating in the manufacturing sector will need to register their water.

Energy, electricity and waste services

Based on ABS data (catalogue 8167.0), seven per cent of energy, electricity and waste services businesses had more than 50 per cent foreign ownership. (There is no data published on business in these sectors with foreign ownership of more than 10 per cent).

The ABS does not have public information about the number of businesses in this sector. The Australian Energy Market Operator (AEMO) in its 2015 annual report listed a total of 75 industry members. Based on the data available, the number of business which might need to register water entitlements, if they do not get their water supply from water utilities, could be up to five. However, this figure may be an underestimate given the definition of foreign person refers to ownership of 20 per cent, not 50 as used in the calculation.

15 Based on information provided by the DAWR through publically available information. State-owned IIOs have been excluded from the calculation as they cannot meet the definition of 'foreign person.'

16 Based on information provided by the DAWR through publically available information.

Registration costs

Based on advice from the DAWR, which was tested through consultation, the following assumptions have been made to determine the regulatory costs of Option 2.

- a. foreign persons hold on average five water entitlements, each entitlement will need to be registered during the stocktake period;
- b. on average, there would be two changes a year to a foreign person's water holdings which will need to be updated on the register;
- c. on average, each update or registration will take up to 30 minutes;
- d. foreign persons may need to download records from the relevant state or IIO register to enable them to register. A download fee of \$15 has been assumed. Most state registers provide single copies of records for a fee in a range of \$10-\$20.
- e. an hourly rate of \$65.45/hr (OBPR standard costs) has been assumed in these estimates.

Option 2a: National register from state and territory based registers

Under this option, a national register would be created utilising information from state and territory registers.

Benefits

The benefit of Option 2a is that, leveraging off the existing registers maintained by the states and territories may reduce the potential for duplication at the state, territory and Commonwealth level and multiple interactions with government by the foreign person.

Costs

Public sector costs

The states and territories have indicated that they would seek compensation from the Commonwealth in order to introduce extra data fields and harmonise the data that they each collect. Modifying existing state and territory registers requires a level of harmonisation of systems that are not currently compatible including agreement on terminology and aligning different laws. A similar exercise was attempted between 2009 and 2014 through the National Water Management System. On the basis of the costs faced during the National Water Management System exercise, the DAWR estimates that the cost to harmonise and develop a national register based on state and territory registers would cost between \$86 million and \$106 million.

Community costs

It would not be possible to establish the register under this option to meet the 1 December 2016 timeframe. A process and the necessary information technology changes to facilitate the transfer of information from the states and territories would require a longer lead time than is available. As a result under this implementation option the Agricultural Land Register would lapse on 1 December 2016 with a cost to the community from a lack of information.

Regulatory costs

Foreign persons would face a regulatory cost during the first year under this option – the stocktake – to update the information held on state and territory registers and identify themselves on these registers as ‘foreign persons’. State and territory registers do not currently collect information on the person’s status as a foreign person. The one-off regulatory cost for foreign persons during the stocktake period is estimated at approximately \$180,000.

IIOs would face a one-off regulatory cost under this option to identify themselves as foreign persons. As explained above, the estimated regulatory cost is \$35,500.

Currently, the customers of IIOs do not need to register with states or territories the water they hold under irrigation rights. Therefore, in order for the register to be as comprehensive as is intended, a new obligation to register would need to be imposed on the customers of IIOs. There would be an ongoing cost to IIO customers where they meet the definition of foreign person. It is not possible to determine how many foreign persons in the agricultural sector are the customers of IIOs.

Average annual regulatory costs (from business as usual)		
Change in costs (\$ million)	Business	Total change in costs
Total, by sector	\$0.022	\$0.022

Option 2b: Stand-alone Commonwealth administered register

This option would see the establishment of a stand-alone Commonwealth administered register for water entitlements, in the same way that a stand-alone register has been established for agricultural land. The registration form would be implemented through a new information technology build.

Benefits

The benefit of this approach is that a single registration system could be developed by the Commonwealth which would be less costly than amending the state based registers.

Costs

Public sector costs

The estimated cost of the information technology build is a minimum of \$2 million, based on the cost to design and implement the Agricultural Land Register.

Regulatory costs

Foreign persons would face a regulatory cost during the first year under this option – the stocktake – to register their existing holdings of water entitlements. The one-off regulatory cost estimated for foreign persons during the stocktake period is approximately \$180,000.

IIOs would face a one-off regulatory cost under this option to identify themselves as foreign persons. As explained above, the estimated regulatory cost is \$35,500.

There would also be an ongoing cost to foreign persons to update the register to reflect changes such as the acquisition of a new entitlement. The estimated regulatory cost on average for foreign persons to update their water entitlements is approximately \$73,000 per annum.

Average annual regulatory costs (from business as usual)		
Change in costs (\$ million)	Business	Total change in costs
Total, by sector	\$0.095	\$0.095

Option 2c: Expanded Agricultural Land Register

This option is expanding the existing Agricultural Land Register to include water entitlements.

Benefits

The benefits of this option are that the register can be established more quickly and at less cost compared with other approaches. It is cost effective as most of the information technology architecture is already in place for the Agricultural Land Register.

Duplication can be minimised through this approach as the Agricultural Land Register Act already has timeframes for registration, penalties for non-compliance, reporting obligations and rules to exempt requirements to give notice already in place. An informed estimate by the DAWR is that 75 per cent of agricultural land is subject to irrigation so foreign persons who were already required to register their agricultural land holdings, could also register their water holdings through the same portal. One access point delivers greater awareness and less compliance cost for the majority of foreign persons who will need to register their water entitlements.

Costs

Public sector costs

The ATO has estimated that the cost to amend the existing Agricultural Land Register form to include water entitlements is \$0.92 million.

Regulatory costs

Foreign persons would face a regulatory cost during the first year under this option - the stocktake to register their existing holdings of water entitlements. The one-off regulatory cost estimated for foreign persons during the stocktake period is approximately \$180,000.

IIOs would face a one-off regulatory cost under this option to identify themselves as foreign persons. As explained above, the estimated regulatory cost on average is approximately \$35,500.

There would also be an ongoing cost to foreign persons to update the register to reflect changes such as the acquisition of a new entitlement. The ongoing regulatory cost to update registrations for the majority of affected foreign persons under this option would be less than under a stand-alone register but it is not possible to differentiate the extent of the difference and so the estimated ongoing regulatory cost on average for foreign persons to update their water entitlements is approximately \$73,000 per annum.

Average annual regulatory costs (from business as usual)		
Change in costs (\$ million)	Business	Total change in costs
Total, by sector	\$0.095	\$0.095

5. Consultation plan

Treasury and the DAWR conducted a full public consultation on options to implement the Register of Foreign Ownership of Water Entitlements (Water Register). A consultation paper was released on 22 February 2016 for one month. There were 12 submissions received. In addition, Treasury and the DAWR held discussions with state and territory governments and the following peak industry bodies: the National Farmers' Federation, the NSW Irrigators' Council, the Minerals' Council of Australia and the National Irrigators' Council.

Stakeholders generally welcomed the prospect of further transparency about foreign ownership of water and generally agreed that implementing the Register by amending the *Register of Foreign Ownership of Agricultural Land Act 2015* (the Act) to include registration requirements for water entitlements would be the most cost effective approach. It would also minimise the compliance burden on investors.

The consultation paper raised the issue of whether irrigation rights (contractual rights to water between IIOs and their customers) should be included in the Water Register. Stakeholders indicated that the Water Register would be incomplete without the requirement for foreign persons to register their irrigation rights, given these arrangements account for a large proportion of water available through entitlements.

There were some concerns regarding the regulatory burden which might fall on IIOs who hold water entitlements on behalf of irrigation rights' holders. Stakeholders indicated that the onus should be on the holder of the irrigation right to register foreign ownership, rather than an IIO whose primary role is to deliver water to its customers.

To respond to these stakeholder concerns, Treasury adjusted the approach so that an IIO will only be required to register where the IIO meets the definition of 'foreign person' and the IIO holds water entitlements that are not subject to irrigation rights. A person holding an irrigation right with an IIO would be required to register this interest if the person holding the irrigation right meets the definition of a foreign person. It is expected that further consultation will be conducted to ensure that these exemptions are reflected appropriately in subordinate legislation.

Treasury, the DAWR and the ATO conducted a full public consultation on an exposure draft of the amendments to give effect to the Water Register between 24 August 2016 and 8 September 2016. Meetings were held with the National Farmers' Federation, Minerals Council, NSW Law Society, Law Council and representatives from the irrigation industry. There were 11 written submissions received.

Stakeholders were generally supportive of the approach taken in the draft legislation but raised issues in relation to the regulatory burden of registration and the treatment of IIOs. IIOs were concerned about the administrative costs of determining whether they are a foreign person.

Consistent with the Agricultural Land Register, the exposure draft legislation proposed that foreign persons register their water entitlements within 30 days of acquiring an entitlement. However, the feedback has been that this could create too much red tape as water entitlements turnover more frequently than land, therefore requiring multiple registrations with no overall change in the level of foreign ownership of water entitlements. To address this concern and reduce the regulatory burden, the approach was adjusted so that foreign persons will only be required to update the register once per year to reflect their final water holdings at the end of that year.

Additional consultation will be conducted with stakeholders in relation to the build of the registration form to reduce administrative burden in the registration process. Further consultation will also take place with IIOs on options to reduce the regulatory impact of the register, and as necessary, provide for these arrangements through subordinate legislation.

6. Option selection / Conclusion

The consultation process has shown that there is community concern about the level of foreign investment in water entitlements and stakeholders are supportive of the need to improve transparency around the issue.

A national Water Register that is considered comprehensive and reliable will help improve information about the overall level of foreign ownership of water entitlements and provide for more informed debate.

The Water Register will unequivocally improve the information available to the community. Greater transparency, in whatever form, will improve the nature of the public debate allowing it to be based on facts rather than perceptions and misinformation.

The preferred option is to introduce a Water Register through amendments to the Agricultural Land Act as outlined in Option 2c. Stakeholders have indicated support for this approach and it effectively addresses the policy objectives and results in the highest net benefit compared with the other options.

Option 2c is consistent with the Government's commitment to introduce legislation providing for a Water Register, and seeks to minimise the regulatory burden on foreign persons while comprehensively addressing existing information gaps. Aligning the legislation and reporting requirements with the existing Agricultural Land Register reduces duplication and confusion for industry stakeholders, many of whom are already required to register their interests in agricultural land with the ATO.

Retaining the status-quo is not recommended as it is unlikely to address community concerns or provide the information Government needs to make evidence-based policy decisions on foreign investment in water.

7. Implementation and evaluation

The Register will be implemented by amending the Agricultural Land Register Act to include registration requirements for water entitlements. This approach will limit the regulatory burden for investors by providing one register for land and water utilising the same regulatory framework and reporting obligations of the Commissioner of Taxation (Commissioner). The Agricultural Land Register Act also allows for rules to be made to exempt requirements to give notice. This approach is cost effective as much of the information technology architecture is already in place.

Consistent with the Agricultural Land Register, the Commissioner will have general administration of the Register and the ATO will amend the Agricultural Land Register registration form to include fields for water entitlements.

Various approaches will continue to be undertaken to ensure the requirements of the Register are communicated effectively and broadly, including further stakeholder consultations on the subordinate legislation to reduce regulatory burden and the development of the data fields for water entitlements. Guidance material will continue to be issued so stakeholders are aware of their requirements under the new legislation. The DAWR will assist the ATO by providing guidance material and training on the types of water entitlements which need to be captured in the legislation and also assisting with stakeholder enquiries.

While estimated regulatory costs have been calculated, the final regulatory cost will be impacted by the level of detail required to be registered.

A risk affecting this proposal is the sunset provision in the Agricultural Land Register Act which means the Act will sunset at the end of 1 December 2016, if legislation providing for a register of foreign ownership of water entitlements does not commence before that time. This risk is being managed by ensuring that enabling legislation providing for the Register is introduced as early as possible in the 2016 Parliamentary Spring sittings.